IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5602 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

BALUBHAI MOHANBHAI AANDRAPPA - Respondent(s)

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Appearance :

MR AM DAGLI for MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to quash and set aside the order dated 07.10.1996 passed in Recovery Application No.247 of 1993 and the order dated 26.05.1997 passed in

Recovery Application No.26 of 1996 by the Labour Court, Bhavnagar, whereby an amount of Rs.58,824.35 was ordered to be recovered from the petitioner.

2.0 The brief facts of the case are that the respondent herein was an employee of the petitioner Corporation. On 23.08.1979 the respondent was served with a charge-sheet on the ground that he had failed to vacate the quarter alloted to him. Therefore, inquiry was held against the respondent. Since the charges leveled against the respondent were proved, he was dismissed from service on 27.02.1981.

2.1 Against the said order, the respondent preferred a reference before the Labour Court, Rajkot, being Reference (LCR) No.609 of 1986, whereby the Labour Court, vide order dated 02.06.1990, quashed the order of dismissal passed by the petitioner Corporation and granted reinstatement with full back wages. Pursuant to the above order, the respondent was reinstated in service.

2.2 Thereafter, the respondent preferred an application being Recovery Application No.247 of 1993 claiming

Rs.58,824.35 towards the amount of Earned Leave, LTC encashment, Medical allowances etc. for the interim period. The petitioner filed his reply stating that the respondent was not entitled for the said amount. However, the Labour Court vide order dated 07.10.1996 directed the petitioner to pay the amount as claimed by the respondent.

2.3 Thereafter, the respondent filed another application being Recovery Application No.26 of 1996 for issuance of a certificate of recovery of the amount as was ordered in the Recovery Application No.247 of 1993. The Labour Court vide order dated 27.05.1997 allowed the said application. Hence, this petition.

3.0 Mr. A M Dagli learned advocate for the petitioner has contended that the Labour Court ought not to have entertained the Recovery Application preferred by the respondent workman since the petitioner Corporation had already complied with the directions issued by the Labour Court vide order dated 02.06.1990 passed in Reference (LCR) No.609 of 1986.

3.1 He has submitted that since the award of the Labour

Court was implemented in its true spirit, the Recovery Application of the respondent should not have been entertained by the Labour Court. He has, therefore, submitted that the impugned order of the Labour Court is illegal and erroneous and deserves to be quashed and set aside.

4.0 Mr. T R Mishra learned advocate for the respondent has contended that the Labour Court was justified in entertaining the Recovery Application of the respondent, since by its earlier award, it had only granted back wages to the respondent. He has submitted that back wages include other benefits also like Earned Leave, LTC encashment, Bonus etc. which the respondent workman is entitled to receive.

4.1 Mr. Mishra has relied upon a decision of this Court in the case of Union of India v. Kishor Lakha reported in 2004 (102) F.L.R. pg.624, wherein it has been held that when reinstatement with back wages is ordered, the back wages include all monetary benefits including bonus accrued.

4.2 Mr. Mishra has next relied upon a decision in the

case of Vepar Vikas Co-operative Bank Ltd. v. Ghanshyam Lallubhai Patel reported in 2001 (90) F.L.R. pg.186, wherein it has been held that the word 'wages' include other benefits also.

4.3 Mr.Mishra learned advocate for the petitioner has next relied upon a decision of the Bombay High Court in the case of Kishore B. Dave v. The Dean, J.J. Group of Hospitals & ors., wherein the petitioner was awarded full back wages and other benefits. He has, therefore, submitted that the impugned order of the Labour Court is just and proper and requires no interference from this Court in this petition.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 01.08.1997, this Court had stayed the operation of the impugned orders dated 07.10.1996 and 26.05.1997 till the final disposal of the petition.

5.1 In the impugned order of the Labour Court, the learned Presiding Officer has specifically mentioned that the respondent workman is entitled for back wages only and it has not been mentioned that the respondent workman

is entitled for other benefits also. The said award has been complied with by the petitioner in its true spirit.

5.2 The principle laid down in Union of India v. Kishor Lakha's case (supra), cannot come to the rescue of the respondent since in that case the claim involved bonus also. In the case on hand, the respondent has not raised any such claim.

5.3 The next decision relied upon by Mr. Mishra in Vepar Vikas Co-operative Bank Ltd. v. Ghanshyam Lallubhai Patel's case (supra) also cannot come to the rescue of the respondent since the said decision pertained to the recovery of wages under the B.I.R. Act where the definition of “wages” was defined.

5.4 The decision in Kishore B. Dave v. The Dean, J.J. Group of Hospitals & ors.'s case (supra) shall also not apply to the case on hand since in the present case, the Labour Court has clearly mentioned that the respondent workman is entitled for back wages only. It has not been mentioned that the respondent is entitled for other benefits also. Hence, the aforesaid decisions cannot be helpful to the learned advocate for the respondent.

5.5 Therefore, when the respondent workman has received the amount which he is entitled to receive, he cannot claim other benefits which he is otherwise not entitled to receive. Hence, I am of the opinion that the power exercised by the Labour Court under Section 33(C)(1) of the Industrial Disputes Act, 1947 was without any jurisdiction and is required to be quashed and set aside.

6.0 In the result, this petition is allowed. The order dated 07.10.1996 passed in Recovery Application No.247 of 1993 and the order dated 26.05.1997 passed in Recovery Application No.26 of 1996 by the Labour Court, Bhavnagar, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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